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The justice of this criticism must depend upon the true nature of a bailor's interest. All will agree that the bailor has not possession, but that he has a conditional right of possession, — that is, a right of action. In the opinion of our distinguished critic, the bailor has, so long as the chattel bailed is *in rerum natura*, something more than this right of action, — namely, the title. Here, with all deference, we must take issue. We are of Blackstone's opinion (2 Com. 453) that "the bailor hath nothing left in him but the right to a *chose in action*." We think any one who claims more than this for the bailor will have to exercise all his ingenuity to define the additional interest. We may refer for a fuller expression of our views to Vol. III. of the REVIEW, pages 314, 342, *n.* 1, 343–346.[1] An additional test of the accuracy of our position is furnished by the case of *Jones* v. *Hodgkins*, 61 Me. 480. The defendant was a bailee, with instructions to sell in behalf of the owner. The owner, without notice to the bailee, sold the goods himself to the plaintiff. The defendant subsequently, and without knowledge of this sale, sold the goods to another. The plaintiff sought to charge the defendant for a conversion. Three judges were in favor of the action, because by the sale of the bailor the title passed to the plaintiff, and the defendant, however innocent, had in fact sold the plantiff's goods without any authority from him. The majority of the court were against the action. The reasoning is not altogether satisfactory; but the decision seems clearly right. The bailor's interest was simply a *chose in action* against the defendant. He had a right to have his goods back, unless they were sold before a countermand of the instruction to sell; and in that event he would be entitled to what the bailee had received for them. This right, and this right only, passed to the plaintiff. As the goods were sold before countermand, the plaintiff was not entitled to have the goods, and therefore could not maintain trover.

In *Bristol Bank* v. *Midland Company*, the bailee having converted the goods, the bailor had at the time of the sale to the plaintiff a choice of claims against the defendant. He might sue for the conversion, or he might demand his goods, and on refusal bring an action for the breach of the contract of bailment. This choice of rights passed by the sale to the plaintiff. The plaintiff made the demand and recovered. On principle and by the earlier decisions, the plaintiff should have enforced his rights in the name of the bailor. But in *Franklin* v. *Neate*, 13 M. & W. 481, the court, by judicial legislation, made it possible for the assignee of a bailor to sue in his own name.

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JURISDICTION OF THE FEDERAL COURTS OVER QUESTIONS ARISING UNDER STATE LAWS. — The opinion of the Supreme Court in *Boyd* v. *Nebraska*, 12 Sup. Ct. Rep. 380, is a warning to the States that they may suddenly find that, through incautious legislation on their part, they have lost their freedom from vexatious Federal control. Ordinarily the choice of its governor is a matter which concerns the State alone. It may choose a non-resident Hottentot, if it desires, and the Federal Government cares not a whit. The Constitution of the United States is a constitution *for* the United States, and not for each State, except in certain limited particulars. Consequently, it does not prescribe rules for the

[1] Page 344, line 3, "valid" should be "invalid," and page 346, line 2, "vendee," should read "vendor."

management of their internal affairs by the States. Nevertheless, the highest Federal court has just passed upon the qualifications of an aspirant for the office of governor of Nebraska.

The case arose upon a provision in the State constitution to the effect that the governor should be a citizen of the United States. The respondent claimed to be a naturalized citizen of the United States, and to have been duly elected governor. The Supreme Court of the State decided against him,[1] on the ground that he had never become a citizen. Upon writ of error the Supreme Court of the United States decided for the respondent, reversing the decision of the State court. Its jurisdiction is founded upon the fact that here was a decision of a State court adverse to a right claimed under the laws of the United States.

It may be doubted whether the court has not assumed a jurisdiction which Congress did not give it, and, indeed, could not give it. The right to be governor of a State is not a privilege of a citizen of the United States as such, and is essentially outside the sphere of Federal concern. Nor is it made a Federal question by a State law requiring that the governor shall be a citizen of the United States. The phrase "citizen of the United States," as used in the State constitution, is merely a mode of expression. The State might have imposed the same qualifications in other terms, and confessedly there would have been no question for the Federal courts. Surely Federal jurisdiction depends upon substance rather than form, and cannot be made to hang upon the phrase which the legislature uses. Suppose a State imposes a penalty for selling liquor without a license from the United States, and the State court has found that the defendant had no such license. Is he entitled to have his case reviewed by the Federal courts? When a State adopts a Federal law, or when it legislates in terms of Federal rights or privileges or status, it there makes the law its own. The law is none the less a State law because it is expressed in terms of Federal law. It is submitted that the decision of the court would have been sounder if it had been to the effect that where a question arises under a United States law which comes into the case only because brought in by a State law founded upon it, there the question does not involve the laws of the United States. Mr. Justice Field dissents, upon the ground set forth above, and points out that *Missouri* v. *Andriano*, 138 U. S. 496, the only authority which the majority cite, contained only a *dictum* on this subject.

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EXTENT OF LEGISLATIVE POWER UNDER THE DOCTRINE OF THE GRANGER CASES. — The Supreme Court of the United States has again affirmed the doctrine of the Granger cases. The actual decision[2] is that a law of New York prescribing a maximum rate of charges for grain elevators in the city of Buffalo is valid. The case is, indeed, almost an exact repetition of *Munn* v. *Illinois*,[3] and, as in that case, there is a strong dissent denying the general right of the Legislature to regulate a purely private business, though "clothed with a public interest."

There is only one respect in which the case really adds anything to what has gone before, and that is the interpretation which Mr. Justice Blatchford, writing the opinion of the court, puts upon the decision of

[1] 48 N. W. Rep. 739. [2] *Budd* v. *State of New York*, 12 Sup. Ct. Rep. 648.
[3] 94 U. S. 113.